

OGC HAS REVIEWED.

3 July 1946

Policy and Regulations Branch  
Civilian Personnel Division  
Office of the Secretary of War  
Pentagon Building  
Washington, D. C.

Gentlemen:

This Unit has for consideration the cases of two employees restored to civilian positions after duty with the U. S. Navy. Both of the employees have permanent classified civil service status with the Government and reemployment benefits were exercised in accordance with applicable provisions of the Selective Training and Service Act of 1940. At the time the employees went on military furlough they were employed in the Office of Strategic Services, the personnel, records, property and funds of which were transferred to either the Department of State or the War Department on 1 October 1945 pursuant to Executive Order 9621, dated 20 September 1945. The activity to which the subject employees were attached was transferred to the War Department, Strategic Services Unit, and, accordingly, they were restored to civilian positions in that Unit.

The question raised by this letter has to do with the possible right to within-grade salary increases, in grades higher than those held by the employees at the time they went on military furlough, because of the peculiar nature of the circumstances involved. The facts concerned are set forth as follows:

Case 1. The employee entered the naval service on 9 February 1943 from the position of Assistant Chief, Budget and Finance Branch at CAF-12. He immediately reported for duty with the Naval Command, Office of Strategic Services, and was assigned to the same position he occupied as a civilian. On 1 May 1943, he was appointed Chief, Finance Branch, under the reorganization of the administrative services functions of the Office of Strategic Services. Since the incumbent was in the Navy, the position was not allocated at CAF-13 through civil service channels; however, on 3 August 1943, the position of Assistant Chief, Finance Branch, was established at CAF-12, the action stipulating that the individual assuming this position was to assist the Chief of Finance, a naval officer. On 1 October 1945, the Naval

Command, Office of Strategic Services, became the Naval Command, Strategic Services Units, Departments of State and War, in line with the provisions of Executive Order 9621, supra. The subject employee was transferred to the new command and his assignment continued. On 20 November 1945, the position Chief, Fiscal Division (the name of the activity was changed from Finance Branch to Fiscal Division in May 1945), was allocated at CAF-15, the employee assuming duties as a civilian on that date having been released to an inactive status by the Navy.

Case 2. The employee entered the naval service on 25 May 1944, from the position of Chief, Miscellaneous Claims Section, Finance Branch, at CAF-9. He reported for duty with the Naval Command, Office of Strategic Services, on 25 July 1944, and was assigned to and resumed duties with the Finance Branch. On 18 September 1944, he was appointed Fiscal Inspector, vice a civilian employee who transferred to another Federal agency. The position had been allocated at CAF-11 through civil service channels. When, on 1 October 1945, the Naval Command, Office of Strategic Services, became the Naval Command, Strategic Services Units, Departments of State and War, the subject employee was transferred to the new command and his assignment continued. On 15 April 1946, the employee assumed the duties of Fiscal Inspector, CAF-11, as a civilian having been released to an inactive status by the Navy.

There appears to have been no case paralleling the question at hand upon which you have ruled. Of interest, however, is the finding applicable to Case 3, 24 Comp. Gen. 729, which provides:

" \* \* \* there is no authority of law to grant administrative promotions to civilian employees from grade to grade under the Classification Act while on so-called military furlough during which period the employees are not in their civilian positions. \* \* \* The Selective Training and Service Act, 54 Stat. 890, authorizes restoration to the same civilian position or 'to a position of like seniority, status and pay.' There does not exist any authority of law for promotion of employees from grade to grade under the Classification Act based upon seniority, similar to the laws, or regulations having the force and effect of law, applicable to the Postal Service, but such promotions under the Classification Act are made by selection of individual employees. Hence, 'seniority' may not be recognized as

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a right for advancement from grade to grade under the Classification Act and, accordingly, a record or paper promotion of a former civilian employee from grade to grade under the Classification Act when he was out of his civilian position during service in the armed forces may not be recognized as having any legal force or effect for the purpose of granting within-grade promotions in the higher grade upon reemployment after discharge from the armed forces. \* \* \*". (Underscoring supplied)

It is to be noted, in connection with the ruling quoted above, that the employees concerned in the cases at hand have actually occupied the positions they assumed as civilians on 20 November 1943 (Case 1) and 15 April 1946 (Case 2) since 1 May 1943 and 18 September 1944, respectively. No record or paper promotions were effected through civilian personnel action at the time the positions were occupied since the employees were in the Navy; however, the employee in Case 1 was appointed Chief of Finance, effective 1 May 1943, by Office Order No. 1, issued by the Deputy Director-Services on 30 April 1943, and the employee in Case 2 was appointed Fiscal Inspector, effective 18 September 1944, by memorandum, issued by the Chief of Finance on 18 September 1944.

In view of the foregoing, and since it is a fact that the subject employees, had they been civilians, would have been promoted to the positions they now occupy on 1 May 1943 (Case 1) and 18 September 1944 (Case 2), the question is raised as to the propriety for counting the employees' waiting periods for within-grade pay increases in grades CAP-13 (Case 1) and CAP-11 (Case 2) from 1 May 1943 and 18 September 1944, respectively.

This question was discussed by this Unit with Mr. George Brewer, Assistant Administrative Assistant to the Secretary of War, who suggested the matter be presented to your Branch. It was further agreed that after review in your office consideration be given by your Branch to sending this question to the Civil Service Commission or the Comptroller General for a formal ruling. Since this Unit is a part of the War Department, it was felt that a request for a formal ruling of this nature from the Civil Service Commission or the Comptroller General should be processed through normal War Department channels and not go directly from this Unit to such agencies.

If further information is desired, we shall furnish it

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upon request. Will you kindly advise this Unit of the action taken by your Branch?

For the Director:

STATINTL

[REDACTED]

Adjutant

CC:

[REDACTED]

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